

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-370-JJF
)	
D.O.C. COMMISSIONER STAN TAYLOR,)	
First Correctional Medical, Correctional)	
Medical Services, Dr. Niaz)	TRIAL BY JURY
)	OF TWELVE DEMANDED
Defendants.)	
)	

**MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC.,
TO DISMISS PLAINTIFF'S COMPLAINT¹**

COMES NOW Correctional Medical Services, Inc. ("CMS"), by and through its undersigned counsel, and respectfully moves this Honorable Court to enter an Order pursuant to Federal Rules of Civil Procedure 12(b)(6) dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted. In support of this Motion, CMS offers the Memorandum of Points and Authorities filed simultaneously herewith.

MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN

BY: /s/ Kevin J. Connors
KEVIN J. CONNORS, ESQ. (I.D. #2135)
LORENZA A. WOLHAR, (DE ID # 3971)
1220 N. Market Street, 5th Floor
P.O. Box 8888
Wilmington, DE 19899-8888
(302) 552-4300
Attorneys for Defendant, Correctional Medical Services, Inc.

Dated: October 31, 2006

¹ CMS waives its right to file an Opening Brief and submit this Motion in lieu thereof pursuant to Local Rule 7.1.2. However, CMS reserves the right to file a Reply Brief.

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2006, I electronically filed the Motion of Defendant, Correctional Medical Services, Inc., to Dismiss Plaintiff's Complaint with the Clerk of Court using CM/ECF, which will send notification of such filing to the following:

I hereby certify that on October 31, 2006, I have mailed by United States Postal Service, the Motion of Defendant, Correctional Medical Services, Inc., to Dismiss Plaintiff's Complaint to the following non-registered participant:

Michael Lee Rose
SBI# 097880
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: /s/ Kevin J. Connors
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ORDER

AND NOW, this _____ day of _____, 2006, upon consideration of the Motion of Defendant, Correctional Medical Services, to Dismiss Plaintiff's Complaint and any Response thereto, it is hereby **ORDERED** that the Motion is **GRANTED** in favor of Defendant, Correctional Medical Services and all claims therein against Defendant, Correctional Medical Services are dismissed with prejudice.

J.